

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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REGULATORY AUTH.

NASHVILLE, TENNESSEE

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September 9, 1999

CHIEF OF FILE
EXECUTIVE SECRETARY

IN RE:

**PETITION FOR ARBITRATION BY
ITC^DELTA COM COMMUNICATIONS,
INC. WITH BELL SOUTH
TELECOMMUNICATIONS, INC.,
PURSUANT TO THE
TELECOMMUNICATIONS ACT OF 1996**

DOCKET NO. 99-00430

**PRE-ARBITRATION BRIEF OF ITC^DELTA COM COMMUNICATIONS, INC.
REGARDING EXTENDED LOOPS**

COMES NOW, ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom"), pursuant to the Rules of the Tennessee Regulatory Authority ("TRA" or "Authority"), and hereby submits this Pre-arbitration Brief Regarding Extended Loops in response to the Brief of BellSouth Telecommunications, Inc. Regarding the Appropriateness of Certain Issues in This Arbitration Proceeding, which was filed on August 19, 1999.

I. INTRODUCTION

BellSouth's assertion that the TRA may not consider the issue of extended loops comprised of a combined UNE loop, cross connection and special access transport service is based on a superficial reading of the Petition and a complete lack of understanding by BellSouth's arbitration team of the manner in which BellSouth currently provides extended loops to ITC^DeltaCom. In the Pre-Hearing Brief of ITC^DeltaCom Communications, Inc. which was

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filed on August 18, 1999, ITC^DeltaCom stated that “to the extent BellSouth objects to the issue of extended loops articulated at the pre-arbitration conference by ITC^DeltaCom representative Hyde (see, e.g., T. 113) as outside the scope of the Petition, ITC^DeltaCom will respond in writing in a reply brief.”¹ In the Brief of BellSouth Telecommunications, Inc. Regarding the Appropriateness of Certain Issues in This Arbitration Proceeding, which was filed on August 19, 1999, BellSouth argues that ITC^DeltaCom “did not expressly include” a request for an “extended loop” comprised of a UNE loop, cross connection, and special access transport service” in the Petition for Arbitration.²

II. THE PETITION

On June 11, 1999, ITC^DeltaCom filed the Petition for Arbitration which gave rise to this Docket. That Petition includes a lengthy proposed Interconnection Agreement (Exhibit A) which not only articulates each and every issue which remained open after 160 days of negotiations, but also includes proposed contract language (shown as shaded), which if adopted would resolve each open issue. The Petition also includes as Exhibit B a matrix. That matrix refers to extended loops as those which are currently used to serve ITC^DeltaCom's customers. The cover pleading specifically incorporates Exhibits A and B into the Petition.³ Paragraph 24 of the Petition clearly and specifically refers to Attachment 2 Section 1.3 of the proposed Interconnection Agreement. Attachment 2, Section 1.3 (the relevant parts of which were shaded) states that BellSouth shall

¹ See Pre-Hearing Brief of ITC^DeltaCom Communications, Inc., filed August 18, 1999 at n.1.

² See Brief of BellSouth Telecommunications, Inc. Regarding the Appropriateness of Certain Issues in This Arbitration Proceeding, filed August 19, 1999 at pp. 10 - 11.

³ See Paragraphs 6 and 7 of the Petition.

provide “Extended Loops” and “Any other UNE combination(s) furnished to ITC^DeltaCom as of January 25, 1999.” Furthermore, in the summary of ITC^DeltaCom’s Position in the Petition in paragraph 24, ITC^DeltaCom states that “... ITC^DeltaCom must be permitted to continue providing service through Extended Loops.”⁴

The language included with the Petition covers the combination of a UNE loop, cross connection and special access transport service if either that combination is considered to be an “extended loop” or it is a combination furnished to ITC^DeltaCom as of January 25, 1999. Of course, ITC^DeltaCom submits that the combination is both an extended loop and was previously provided to ITC^DeltaCom. In either case, there can be no dispute that ITC^DeltaCom requested of the Authority on June 11, 1999 that BellSouth be required to provide “extended loops” and any combinations which were furnished to ITC^DeltaCom under the previous Interconnection Agreement. BellSouth’s argument that ITC^DeltaCom waived its right to request extended loops and a continuation of extended loops in the manner in which they were being provided on a continuing basis under the previous Interconnection Agreement is the result of a superficial reading of the Petition and its exhibits.⁵

⁴ BellSouth did not dispute the inclusion of this issue on the Joint List of Unresolved Issues, nor did it raise as an issue the definition of extended loops. Number 8 on the Joint List of Unresolved Issues is Issue 2(b)(iii) which refers to “extended loops” as a separate item. Implicit in this issue is that extended loops would be defined in a manner the includes provisioning of extended loops in the same way it has been provisioned under the previously approved Interconnection Agreement.

⁵ It is noteworthy that this issue was the subject of extensive negotiations prior to the filing of the Petition.

III. EXTENDED LOOPS WERE PREVIOUSLY PROVIDED USING A COMBINATION COMPRISED OF A UNE LOOPS, CROSS CONNECTION AND SPECIAL ACCESS TRANSPORT

Under the interconnection agreement between ITC^DeltaCom and BellSouth which was previously approved by the Authority, BellSouth provided "extended loops" to ITC^DeltaCom through a combination of a UNE loop, cross connection, and special access transport service. Indeed, BellSouth has provided the combination of a UNE loop, cross connection and special access in approximately 2500 instances.⁶ That Interconnection Agreement was approved by the TRA as compliant with Section 252 of the federal Telecommunications Act of 1996 (the "Act"). Nothing has changed which would make it no longer compliant.⁷ The fact that BellSouth provided more than 2500 extended loops through this combination was brought to the attention of the TRA staff and BellSouth's arbitration team at the pre-arbitration conference. BellSouth's attorneys stated they were unaware of the fact that the combination of a UNE loop, cross connection and special access transport were considered to be an extended loop between ITC^DeltaCom and BellSouth and that BellSouth had provided so many extended loops through that network combination. Of course, the fact that BellSouth's attorneys who attended the pre-arbitration conference were surprised by the fact that such service had been provided is not

⁶ Assuming this issue is allowed to be arbitrated, ITC^DeltaCom witness Thomas Hyde will provide testimony in this Docket demonstrating that BellSouth has provided an extended loop to ITC^DeltaCom through the combination of a UNE loop, cross connection and special access transport approximately 2500 times.

⁷ Indeed, BellSouth has committed to the FCC that it will continue to provide combinations to CLECs in the same way it has in the past. BellSouth has stated that it "will continue to provide every unbundled network element in its contracts, which affords access to all those [UNEs] currently listed in Section 51.319 of the [FCC's] Rules." See Letter of Sidney Boren, Executive Vice President of BellSouth, February 11, 1999 which is attached hereto as Exhibit 1.

grounds for a finding that an issue is not appropriate for arbitration.⁸ BellSouth must have been aware of the service it was providing, even if particular attorneys were not.

IV. OTHER UNE COMBINATIONS

In addition to arguing with ITC^DeltaCom regarding the extended loops that BellSouth has provided for some time and in relatively high quantities, in its Pre-Hearing Brief BellSouth argues that it is not required to provide any combinations of UNEs to ITC^DeltaCom. This argument is not new. For more than three years, BellSouth has attempted to deny competitive local exchange carriers (“CLECs”) access to UNEs in combined form at forward-looking cost-based prices. The United States Supreme Court put an end to BellSouth’s recalcitrance when it upheld the validity of FCC Rule 315(b) which forbids incumbent local exchange companies from separating UNEs before providing them to CLECs. The Court found:

[The Act] forbids incumbents to sabotage network elements that are provided in discrete pieces, and thus assuredly contemplated that elements may be requested in combined form (which the [Federal Communications] Commission rules do not prohibit). But it does not say, or even remotely imply, that elements must be provided only in this form and never in combined form.

See AT&T Corp., et. al. v. Iowa Utils. Bd., et. al., 119 S.Ct. 721, 737 (1999). The Supreme Court’s decision should have put an end to BellSouth’s refusal to provide combinations to CLECs, but apparently it has not. BellSouth’s position in this regard is simply untenable. The issue of UNE combinations and prices for the provisioning of UNE combinations must be included in the Interconnection Agreement between BellSouth and ITC^DeltaCom.

⁸ BellSouth’s argument that it is not required to provide UNEs combined with a tariffed service ignores the requirement of the Act that it provide local interconnection at any technically feasible point. Section 251(c)(2)(C) of the Act. The fact that the combination has been provided approximately 2500 times makes it clear it is technically feasible to provide such service.

ITC^DeltaCom will provide service to Tennessee consumers through UNEs. The issue was not settled through negotiation and thus must be arbitrated.

V. CONCLUSION

ITC^DeltaCom's Petition for Arbitration clearly sets forth the issue of extended loops comprised of a combined UNE loop, cross connection and special transport service. The Petition, the proposed Interconnection Agreement (Exhibit A), and the issues attached to the Petition (Exhibit B) expressly articulate this issue. The Petition and all the exhibits were filed June 11, 1999. Furthermore, such combinations have been provided by BellSouth to ITC^DeltaCom. With regard to the other combinations, the United States Supreme Court has determined that Incumbent Local Exchange Carriers such as BellSouth must provide combinations of UNEs to CLECs.

Respectfully submitted this 9th day of September, 1999.



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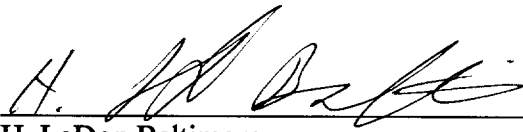
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of September, 1999, a true and correct copy of the foregoing was served by hand delivery, facsimile transmission, overnight delivery or U. S. Mail, first class postage prepaid, to the following:

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300



H. LaDon Baltimore

BELLSOUTH

BellSouth Corporation
Suite 2004
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610

Sidney Boren
Executive Vice President
Planning, Development and Administration

February 11, 1999

404 249-4360
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Mr. Larry Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 500
Washington, D. C. 20554

Dear Mr. Strickling:

I am writing in response to your request that BellSouth state its policy with respect to the provision of unbundled network elements on a going-forward basis in the wake of the Supreme Court's decision in AT&T v. Iowa Utilities Board. This will confirm that BellSouth's policy is as follows:

1. Until such time as the FCC adopts new definitions of unbundled network elements, BellSouth will continue to provide every unbundled network element in its contracts, which affords access to all those currently listed in Section 51.319 of the Commission's Rules.
2. BellSouth will continue to negotiate interconnection agreements with CLECs in good faith consistent with its obligations under Section 252 of the Communications Act of 1934, as amended.

If you have any questions with respect to this matter, please feel free to call me.

Sincerely yours,



CC: All Commissioners

EXHIBIT 1